

# 12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with [41 U.S.C. 3307](#), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at [52.212-1, Instructions to Offerors-Commercial Items](#).* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27 a, [SF 1449](#)). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with [12.302](#).

(2) *The provision at [52.212-3, Offeror Representations and Certifications-Commercial Items](#).* This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with [subpart 1.4](#). Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard.

(3) *The clause at [52.212-4, Contract Terms and Conditions-Commercial Items](#).* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. The contracting officer may tailor this clause in accordance with [12.302](#).

(4) *The clause at [52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items](#).* This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5](#)(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104](#)(d). When cost information is obtained pursuant to [part 15](#) to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(i) Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(ii)

(A) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the contracting officer shall use the clause with its Alternate II.

(B)

(1) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate II to that modification.

(2) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate II applies.

(C) The contracting officer may not use Alternate I when Alternate II applies.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at [52.212-2](#), Evaluation-Commercial Items, in solicitations for commercial items (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [subpart 14.2](#) or [subpart 15.3](#), as an addendum (see [12.302\(d\)](#)).

(d) Other required provisions and clauses. Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(1) Insert the provision at [52.204-7](#), System for Award Management, as prescribed in [4.1105\(a\)](#).

(2) Insert the clause at [52.204-13](#), System for Award Management Maintenance, as prescribed in [4.1105\(b\)](#).

(3) Insert the provision at [52.204-16](#), Commercial and Government Entity Code Reporting, as prescribed in [4.1804\(a\)](#).

(4) Insert the clause at [52.204-18](#), Commercial and Government Entity Code Maintenance, as prescribed in [4.1804\(c\)](#).

(5) Insert the clause at [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems, in solicitations and contracts (except for acquisitions of COTS items), as prescribed in [4.1903](#).

(6) Insert the provision at [52.204-24](#), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, as prescribed in [4.2105\(a\)](#).

(7) Insert the provision at [52.207-6](#), Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), as prescribed at [7.107-6](#).

(8) Insert the provision at [52.209-7](#), Information Regarding Responsibility Matters, as prescribed in [9.104-7\(b\)](#).

(9) Insert the provision at [52.209-12](#), Certification Regarding Tax Matters, as prescribed at [9.104-7\(e\)](#).

(10) Insert the provision at [52.222-56](#), Certification Regarding Trafficking in Persons Compliance Plan, in solicitations as prescribed at [22.1705\(b\)](#).

(11) Insert the clause at [52.225-19](#), Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in [25.301-4](#).

(12) Insert the provision at [52.229-11](#), Tax on Certain Foreign Procurements—Notice and Representation, in solicitations as prescribed in [29.402-3\(a\)](#). The representation in the provision at [52.229-11](#) is not in the System for Award Management.

(13) Insert the clause at [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors, as prescribed in [32.009-2](#).

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in [12.302](#). For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at [16.506](#) may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in [17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in [part 23](#) regarding the use of products containing recovered materials and biobased products when appropriate for the item being acquired.

(4) When setting aside under the Stafford Act ([subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the System for Award Management.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

**Parent topic:** [Subpart 12.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items](#)